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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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File: LIN 00 233 52025

Office: NEBRASKA SERVICE CENTER

Date: JAN 22 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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INSTRUCTIONS:

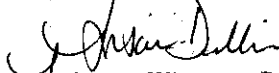
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an information technology and solutions company with 30 employees and a gross annual income of \$249,477. It seeks to employ the beneficiary as an electronics engineer for a period of two and a half years. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, the petitioner argues that the position is a specialty occupation.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

- 1.A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- 2.The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- 3.The employer normally requires a degree or its equivalent for the position; or
- 4.The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In addition, the regulation at 8 C.F.R. 214.2(h)(4)(i)(A)(1) provides that an H-1B classification may be granted to an alien who:

Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation.

The petition is supported by a description of the duties of the position that indicates that the beneficiary will be required to assemble and disassemble computer components, configure hardware and software, and install network and cabling.

On appeal, the petitioner asserts that a baccalaureate or higher degree is normally the minimum requirement for entry into the position and that the degree requirement is common to the industry among parallel positions. The petitioner also assert that it normally requires a degree or its equivalent for the position and that the nature of the duties of the position is so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate degree or higher.

The petitioner's argument on appeal is not persuasive. The record of proceeding does not establish that the position meets any of the four standards enumerated above and, as a result, it has not been shown that the position is a specialty occupation.

The petitioner asserts the proffered position is that of a professional engineer. However, as noted by the director in his decision, the duties of the proffered position appear to be those of a computer repairer or a computer installer. The Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition indicates that there is no general requirement that computer installers and repairers have a bachelor's degree in a specific specialty. In fact, the Handbook indicates that employers prefer workers who are certified as repairers or who have training in electronics from associate degree programs, vocational schools, or equipment manufacturers. Therefore, it has not been established that a bachelor's or a higher degree is normally the minimum requirement for entry into the occupation. It is the duties of a position, not the title that determines whether a position qualifies as a specialty occupation.

In addition, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among

similar organizations. While the petitioner has submitted copies of job advertisements for computer engineers, the proffered position appears to be that of a computer repairer.

Further, the record does not establish that the petitioner has employed individuals with a specific type of degree or its equivalent for this position in the past. Finally, the record does not establish that the duties of the position are so complex and specialized that knowledge required to perform the duties is usually associated with the attainment of baccalaureate degree. It has not been shown that an individual with experience in installing computers and a basic knowledge of electronics could not perform the duties of this position.

In view of the forgoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. As a result, the director's decision will not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.